

BEFORE THE DUE PROCESS HEARING OFFICER

ARIZONA DEPARTMENT OF EDUCATION

--- ----, by and through )	
her parents and legal guardians, )	
--- and --- ---- )	DECISION AND ORDER
Petitioners )	
v. )	
FLOWING WELLS UNIFIED )	
DISTRICT, )	
Respondent. )	
_____ )	

INTRODUCTION

Petitioner --- ---- (hereinafter Student L ) by and through her parents and legal guardians -  
-- ---- and --- ---- (hereinafter, Parent or Mother and Father), filed a request for a due process  
hearing on September 25, 2002, against Flowing Wells Unified School District, (hereinafter,  
District). Student L is five (5) years old and is profoundly deaf. She has attended preschool and  
has been provided with an individualized educational plan (IEP) from the charter school she has  
most recently attended. On October 3, 2002, Student L filed a motion to enforce the Status Quo  
Provision of the IDEA with this hearing officer.

A telephonic prehearing conference was held on October 10, 2002. The hearing on this  
matter was set for October 29, 2002. On October 15, 2002, the hearing officer ruled in favor of

the Petitioner, ordering the District to implement Student L's existing IEP pending a resolution of this matter. The hearing began on October 29, 2002 and concluded on November 1, 2002. Both parties were represented by counsel. As both parents and some of the witnesses are deaf or hard of hearing interpreters were present throughout the hearing to translate from American Sign Language (ASL) for the hearing officer and counsel and to ASL for the parents and witnesses. The parents communicated in part in Mexican Sign Language and an interpreter was present throughout the proceedings who was capable of translating in both languages. The parties submitted post-hearing briefs on November 7, 2002.

Student L has received special education and related services under IDEA, Individuals with Disabilities Education Act, since she was three years old. She was born deaf. Both her parents are deaf, as is her older sister. The primary language of the home is American Sign Language (ASL). For one year she attended the Center for Hearing Impaired Children, (CHIC), which is a program of the Arizona State Schools for the Deaf and Blind, (ASDB). CHIC developed an IEP for her. Last school year she attended the Laurent Clerc Charter School, (hereinafter Clerc). Clerc developed an IEP for her for the 2001-2002 school year. As a charter school, Clerc served a population of both deaf and hearing students from kindergarten through 5<sup>th</sup> grade. Although not yet five years old when she started, Student L was placed in a kindergarten class and her IEP designates her level as "Pre-K/K".

The IEP written for Student L contained goals and objectives based on the Arizona Academic standards but modified or altered to accommodate her deafness. Substantial portions of the IEP contained information and proposed "methodology" or teaching strategies based on or using glossing, which is a system for teaching deaf children, whose primary language is American Sign Language (ASL), to read and write English print.

Clerc was forced financially to close its doors and cease operations as a charter school in the summer of 2002. The parents were notified in August, only a few days before school was scheduled to start. The parents turned to the District, as Student L's district of residence, to enroll Student L almost immediately. On August 23, 2002, Mother provided the District with a letter requesting that the District implement Student L's current IEP which included providing her a full day of kindergarten and direct instruction through glossing as well as speech language therapy. The parents did not object to the District adding other special education services as long as they implemented the current IEP to the extent possible. Several IEP meetings occurred at which the District presented a proposed IEP and subsequent revisions, none of which included glossing.<sup>1</sup> The Parents refused to consent to the proposed IEP unless the IEP contained glossing and filed a due process hearing request. From the date the District allowed Student L to enroll, which was on or about August 30, 2002, until a few days after the stay put order issued on October 15, 2002, Student L was in a half day kindergarten class with no specialized instruction. A sign language interpreter was present to interpret for Student L what the regular class room teacher was saying.

The issues addressed at the hearing were, (1) whether the District's failure or refusal to implement Student L's current IEP resulted in a denial of the student's right to a free appropriate public education, (2) whether the District's proposed IEP was not reasonably calculated to provide Student L with meaningful educational benefit, and (3) whether Student L is entitled to compensatory education.

#### FINDINGS OF FACT

1. L and her family resided in Las Cruces, New Mexico when L was born. She attended

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<sup>1</sup> Each version provided for a gloss specialist one time per week for 30 minutes "to support transition to a regular/general ed curriculum". This was on an interim 60 day basis.

a program at the State school for the deaf in New Mexico as a pre-schooler. From L's teacher in New Mexico, Mother heard about the Clerc school in Arizona and Mother came to investigate and visited the school. She came back a second time and interviewed the school, did more investigation and then the family decided to move here so L's older sister could attend Clerc. Transcript of Record, Volume. I, at page 34, lines 4-12, page 36, lines 1-25. (hereinafter abbreviated as T.R. Vol. Number, page, line).

2. L attended CHIC, a separate kindergarten program at ASDB, for one year, 2000-2001. Mother was not satisfied with it for L because there was no motivation. There was not enough academic challenge, reading and writing going on. L complained and was frustrated at not having enough time to finish her work. T.R. Vol. 1 at 37-38.

3. An IEP was developed for L at CHIC, at the pre school level. She was also evaluated and provided Speech-language therapy as a related service. An audiology exam determined she was profoundly deaf. Exhibit A.

4. At a family meeting at Clerc during May of 2001, mother spoke to the Executive Director, Dr. Blackburn and indicated she wished L could attend Clerc. At the time L was 4 ½ years old and not eligible under state law to attend kindergarten the following September. T.R. Vol. 3 at 428-429. A.R.S. §15-821.

5. Dr. Blackburn checked with the Arizona Department of Education regarding the charter school's ability to admit L. She was informed that because L was not yet five years old at the time the school year would begin, the school could not count her for the purpose of receiving money for her. No information was provided that indicated the school was prohibited from admitting L. T.R. Vol. 3 at 429-430. Affidavit of Laura Blackburn, Exhibit A in Petitioner's Reply to Opposition to Motion to enforce Status Quo.

6. Laurent Clerc admitted L and developed an IEP for her during June, 2001. The IEP was effective September 5, 2001 until September 5, 2002 and L was designated as a “Pre-K/K” student. Exh. B.

7. Glossing was defined in several ways by several witnesses. L’s IEP defines glossing as “Gloss is a term used commonly in the field of linguistics, now being used in the field of deaf education, to describe a linguistic modification tool that provides a print “hybrid” of the two languages involved (i.e.) ASL and English). Gloss is made up of capitalized English words and organized according to ASL morphological and syntactic rules.” Exhibit B, p. 2 of 14.

8. Dr. Blackburn described the basic functions of the Clerc program to give an idea of how the school moved through the kindergarten through fourth grade program as far as teaching reading and writing. The explanation included the use of gloss as capitalized English words, ASL alphabet signs or graphemes and cues in English print letters (glossed text) to show the child how to sign an English print word in ASL. T.R. Vol 3 at 413-424.; Hearing Exhibit #1.

9. The framework demonstrated in Hearing Exhibit #1 was explained in terms of how a child progresses in learning to read. Phonological awareness is at the preschool level and corresponds to an awareness of the sounds symbolized by individual letters. Alphabetic principle is at the kindergarten level when a child learns to recognize and write the alphabet. Orthographic awareness is a recognition and awareness of words and occurs at grades 1-2. Reading comprehension is awareness and understanding of a sentence and occurs at grades 1-3. Accuracy/fluency is at the 4<sup>th</sup> grade and up level. At this point, a child is skilled enough in reading that he/she is no longer learning to read but reads to learn. T.R. Vol 3 at 414-420, 517.

10. Dr. Blackburn also explained that gloss was a tool to scaffold deaf children to English literacy. She explained that traditional [bilingual-bicultural] programs in deaf education used

something called bridging which moved a child from oral ASL directly to English print. There is no direct way to take a student through the process of moving signs to English print because there is no real direct connection between signs and English print. Gloss provides a step-by-step, measurable way to move deaf children to English print. T.R. vol 3 at 464.

11. Gloss has been used as a tool for a long time. It has been used as a convention in papers to explain the meaning when the reader sees some words but in different grammatical structures. It has been used by English speakers to study foreign languages. It has been used to teach ASL as a second language. The idea of using gloss with deaf children to learn print English as a second language is more recent and developed by Dr. Sam Supalla, a professor at the University of Arizona. T.R. Vol 4, at 553-555.

12. Laurent Clerc Charter School used gloss both to teach ASL and to teach deaf students to learn English print as a second language since 1996. Exhibit 1.

13. Both Dr. Blackburn and Dr. Supalla believed strongly that gloss worked in teaching deaf children to read and write English. Gloss served to get a child beyond the comprehension level, i.e., at the 3<sup>rd</sup> to 4<sup>th</sup> grade level, and to the fluency level in reading and writing. T.R. Vol 4 at 556-558. T.R. Vol 3 at 515-517. Hearing Exhibit # 1. Mother believed that glossing provided very good reading and writing skills and that providing L with glossing would put her on the same level with her peers so that she would develop the (English) language and be able to do well when she grows up. T.R. Vol. 1 at 40, 43.

14. Although one of Dr. Supalla's students did research on analyzing the complexity of glossed text from kindergarten through third grade, and Dr. Supalla has written some research articles on the subject, there was no substantial or readily available body of research presented

which supports gloss as a means for teaching a deaf child to read and write English print. T.R. Vol 4 at 559-561. T.R. Vol 4 at 526. T.R. Vol 2 at 344.

15. The District objected to using gloss for L for a variety of reasons.

A. It's very time consuming and confusing. T.R. Vol 1 at 139, 193.

B. Gloss is a methodology and methodologies are not used and should not be used in IEPs. First, it restricts the teacher from using a variety of strategies and selecting what is appropriate for an individual child, and second because it might result in L being placed in a more restrictive environment. T.R. Vol 1 at 74, 139, line 14-23; T.R. Vol 2 at 270, 346.

C. Glossing is too difficult to learn and causes cognitive overload. T.R. Vol 4, at 593-594.

16. In contrast to the latter concern, Dr. Blackburn felt that gloss was easy to learn and analogized the process to how easily youngsters learn to use computers and other electronic devices. T.R. Vol 3, at 516-517.

17. The federal regulations implementing IDEA included as part of the definition of specially-designed instruction that it means, "adapting, as appropriate to the needs of an eligible child --- , the content, methodology, or delivery of instruction—". CFR §300.26(b)(3).

18. Arizona Academic Standards, developed by the State, are required to be used in stating the goals in a disabled child's IEP. T.R. Vol 1 at 60-63.

19. The Clerc IEP for L stated goals which incorporated the Language Arts Standards but were modified in various ways to accommodate her deafness and included references to gloss. Exh. B.

20. The teacher who helped draft the District's proposed IEP for L found that, because the Clerc IEP had objectives and benchmarks under some of the goals which were written at the

foundation level (grades 1-3), it was confusing and the District was unclear on determining L's present level of performance. Exhibits 10 and B; T.R. Vol 1 at 112-119.

21. At the IEP meetings with the parents when the District was presenting its proposed IEP, all present, including representatives from Clerc, agreed that L was at the readiness or kindergarten level. T.R. Vol 1 at 119.

22. Dr. Blackburn felt that L progressed very well on the objectives listed on her Clerc IEP, in some cases reaching mastery. T.R. Vol 3 at 473-474. This conclusion was supported by a portfolio of L's work, which included drawing a picture of a special group and writing the alphabet in capital and lower case letters, as well as L's report card. Exh. 0 and L. T.R. Vol 3 at 475-484.

23. Dr. Blackburn believed that the District's proposed IEP for L was too easy and that the 60% accuracy of L's performance was a little low. T.R. Vol 3 at 473.

24. The District and its representatives from ASDB and Southeast Regional Cooperative did not believe that L and other children from Clerc could be performing at the level stated in their IEP's and that L's performance record was inflated. Exhibit Q.

25. Clear evidence was presented that research studies beginning in 1970 by Steven Quigley, and continuing through 1996, from Gallaudet University, show that deaf children plateau at a third to fourth grade reading level. The recommendations that came out of the Commission on the Education of the Deaf found that the present status of education for persons who are deaf is unsatisfactory, unacceptably so. T.R. Vol 3 at 353-356. The Deputy Superintendent of the Arizona Schools for the Deaf and Blind, who acted as the District's expert witness, agreed that reading at a third or fourth grade level for a 17 to 18-year-old deaf student is unacceptable. T.R. Vol 3 at 355-356.



26. The Deputy Superintendent collaborated with colleagues, including Steven Quigley, in authoring a basal reading series of Textbooks for the deaf, called “Reading Milestones”, first published in 1981. T.R. Vol 2 at 357-358. The Deputy Superintendent receives royalties from the sale of these books and manuals. T.R. Vol 2 at 359. During the time Reading Milestones has been in wide distribution as the most popular reading program of its kind, the reading levels of deaf children have stayed constant at a third to fourth grade level. T.R. Vol 2 at 359-361.

27. Dr. Blackburn is a partner in a limited liability company called Signs of Success which has produced curriculum materials and a resource book which includes glossed materials for use in teaching deaf students facility in ASL and to read English print. T.R. Vol 3 at 499-500; 424-428. Exhibits T, U and V. It is anticipated that the materials will be available for sale through the publisher. T.R. 3 at 500.

28. Dr. Supalla has a comprehensive list of publications on glossing of which the Assistant Superintendent from ASDB was aware. The Assistant Superintendent stated that she thought Dr. Supalla was doing his research in the classroom. T.R.2 at 371, 373.

29. The parents, advocates and District representatives met 4 times to try to develop an IEP for L. The first date, August 23, 2002, the parents brought the IEP from Clerc with them and the District rescheduled the meeting because they stated they were unable to consider placement options or develop an IEP without first reviewing the Clerc IEP. Exhibits L, C, D & E.

30. On August 27, 2002 and thereafter the parents were presented with a proposed IEP already typed up which the parents were asked to agree to. Each version, on August 27, August 28 and September 16 had some handwritten additions or changes. Exhibits C, D & E.

31. Each version listed gloss as a relevant related service solely to support transition to

regular/general ed curriculum. Each version provided gloss for 60 days one time per week for 30 minutes. Exhibits C, D & E.

32. Several other attempts to meet were made to develop the IEP but were cancelled because the District could not obtain an interpreter. Exhibit R.

33. Three of the individuals who attended the IEP meetings for Student L were employed by ASDB through the Southeast Regional Cooperative, which provides teachers of the hearing impaired and other assistance to the public schools. T.R. Vol 1 at 205-206.

34. All of these individuals, as well as the Assistant Superintendent of ASDB testified at the hearing. All of them were asked about their familiarity or experience with gloss. All of them were aware of and had some experience with gloss. T.R. Vol 1 at 134-138; 191-193; Vol 2 at 250-254.

35. Dr. Antia, a professor at the University of Arizona, who coordinates the teacher preparation program in the area of deaf/hard of hearing, exposes her students who are training to be teachers of the deaf, to glossing as a strategy. T.R. Vol 2 at 331.

36. Witnesses for the District who objected to having glossing written into the IEP because it was a methodology and restricted the teacher from using other strategies were asked what strategies or methodologies they would use to teach a deaf student to read English. They indicated there were a variety of strategies but described or explained them very little. “Chunking” was mentioned, as was balanced literacy. T.R. Vol 1 at 157-158, 172, 190-191. Balanced literacy, although explained in a bit more detail, seemed to rely on strategies used with hearing children, i.e., read aloud, grammatic strategies, phonics. Id. At 190-191.

37. Dr. Supalla gave a demonstration to explain in some detail what glossed text is, as well as graphemes, and how that helps a deaf child read English print. T.R. Vol 4 at 552-561.

38. Student L gave a demonstration, with some coaching from Dr. Supalla, of the extent to which she could read a story book using glossed text. When she came to a word she didn't know the gloss provided her with cues to look through the resource book, (Exhibit V) to find the word and the appropriate ASL sign for the word. She spoke in ASL, which was translated by the interpreter. After a slow start she successfully read the entire book. The glossed version of the story was not word for word the same as in a copy of the book without the glossing but the words and meaning, which she successfully translated, were essentially the same. i.e., Baa, Baa said the sheep. Time to go to sleep. – Sheep say baa baa, time for sleep. T.R. Vol 4, at 576-583.

## CONCLUSIONS OF LAW

There were a substantial number of issues raised in this proceeding. The central question, however, around which all other issues revolve is, Does the IEP developed for L by the District, without the inclusion of gloss, provide her with meaningful educational benefit as required to provide her with a free appropriate public education (FAPE)?

### I. PROVISION OR DENIAL OF FAPE

Both parties have appropriately cited *Bd. Of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), as the basis for determining whether the FAPE provisions of the IDEA have been satisfied. First, has the District complied with the procedural requirements of the IDEA? Second, is the IEP the District developed reasonably calculated to enable the child to receive educational benefits? *Id.* At 206-07. The level of benefit provided to the child through the IDEA must be meaningful. *Id.* At 192.

#### A. Procedural requirements.

Petitioners argue that the District violated the procedural requirements by coming to the first meeting of the IEP team on August 27th, and without prior notice to the parent, with an already completed, typed IEP which did not include gloss, or any other provisions of the specialized instruction she was receiving under her current IEP from Clerc. The determination of what was provided in the District's IEP was made prior to the IEP meeting of August 27, 2002 and without parental participation. The 9<sup>th</sup> Circuit has found that among the most important procedural safeguards afforded by IDEA are those that protect the parents' right to be involved in the development of their child's educational plan. *Amanda J v. Clark Count Sch. Dist.*, 267 F. 3d 877, 882 (9<sup>th</sup> Cir. 2001). The Court found that parents, not school districts represent the best interests of their child in the IEP development process and provide critical information that only they are in a position to know.

Here, the District clearly ignored not only what the parents had told it in their letter of August 23, 2002, which asked that the IEP from Clerc be implemented, but also picked through and eliminated all of the portions of the Clerc IEP which they did not agree with. These included, a full day kindergarten, instruction in ASL, a curriculum or "methodology" using gloss to teach L to read English print, and speech language therapy. In the face of what they wanted, and what they had told the District they wanted, the parents were confronted with an IEP which had essentially been prepared without them. The only contribution they could make to the process was to reiterate that gloss instruction was what they wanted.

There was a great deal of evidence presented that the District personnel did indeed discuss the Clerc IEP with the parents at the IEP meetings and there were subsequent IEP's prepared. However, the discussions were focused on what the goals and objectives should say, the inconsistencies in the Clerc IEP as to levels the goals were written at and the confusion the

District had about adaptations to the goals and to L's progress toward those goals as indicated on the IEP. Some hand written changes and additions were made to each IEP but none were substantial or provided any of the parents' requests.

The District may have felt some justification in drafting the IEP as they did, given that the District employees had no experience in providing specialized instruction to a deaf child and the personnel from the Southeast Regional Cooperative and ASDB who were advising them drafted the IEP based on their experience and practice in preparing IEP's for deaf children. Nonetheless, the inescapable conclusion is that the District predetermined the content of the IEP prior to the meeting with the parents and the parents had no opportunity to participate in the development of the plan.

The hearing officer finds that this is a significant violation of the procedural requirements in IDEA to allow the parents to be equal participants in the development of the IEP.

#### B. Substantive Requirements

Turning to the substantive requirements set forth in *Rowley*, is the IEP proposed by the District designed to provide L with meaningful educational benefit?

The District's chief argument is that gloss is a methodology and methodology is not included in an IEP or the development of an IEP. The District contends that legally all that is required by IDEA and state statutes is that the IEP include goals and objectives which are in accord with the Arizona Academic Standards and at the appropriate age level for the particular disability of the child. It must also include a description of the special education services to be provided, including program description, educationally relevant related services and supplementary aids and services/support for school personnel. It must also describe the student's present level of performance. None of these requirements, it argues, include a discussion or

provision of a curriculum or methodology designed to help the child meet the goals and objectives. It further argued that the goals could not be modified from the academic standards to accommodate the needs of the deaf child. *See*, for example, Exhibit B, p. 7 of 14, where the goal has been changed to “attend and express” herself, from “listen and speak” in the Arizona Academic Standards. Exhibit 10, p.2. This is an unacceptable modification according to the District.

Aside from 34 CFR §300.26(b)(3), which specifically includes methodology, there are court cases where the dispute between the parents and the LEA involved which methodology was to be used to provide appropriate education for the child and which party had the discretion to choose the methodology. *Board of Education of Paxton-Buckley-Loda Unit School District No. 10 v. Jeff*, 184 F.Supp.2<sup>nd</sup> 790 (C.D. Ill. 2002); *T.H. v. Bd. Of Educ. Of Palantine School District*, 55 F. Supp. 2d 830 (N.D.Ill. 1999). *Rowley* itself refers to “choosing the educational method most suitable to the child’s needs”. *Rowley*, 458 at 207. (emphasis added). Again, choosing is done only in conjunction with the parents.

Respondent may never before have included methodology in any of the IEP’s written for a child with a disability in the District. The personnel from ASDB may never have included methodology in the IEP’s written for deaf or hard of hearing children. That does not equate with it not being legal to include a particular methodology in an IEP. Nor does it make an existing IEP invalid or subject to being disregarded by the District because a methodology has been included or because the Arizona State Standards are modified to accommodate the individual needs of the child.

It seems of essential importance in this case to consider the methodology of glossing requested by the parents. The reason the parents moved here was so their older daughter who is

deaf could attend the charter school that offered this method of instruction. L attended the charter school for a full year, receiving her education pursuant to an IEP which covered the gloss methodology extensively. The mother believed that L had progressed and been happy at Clerc. Most importantly, there was abundant evidence that L progressed over the school year where she was taught using this methodology. Exhibit B, J, O & P; Testimony of Dr. Blackburn. The District disregarded all that. Exhibit Q indicates that they believed that her reports showed inflated performance which she could not possibly be achieving.

It seems clear that this methodology of glossing can and should be contained in L's IEP. There is no legal prohibition against it. In fact, case law demonstrates that methodology in IEP's has been done in other jurisdictions.

This is not a dispute between petitioner and respondent about which methodology is the most appropriate for L. Petitioner questioned several of respondent's witnesses about what methodology or curriculum they had or would use to teach L to go from ASL to reading and writing English print. No witness made any claim to any methodology which was effective. They spoke about strategies they would use to teach L to read. They mentioned "chunking" and "balanced literacy". No one went into any detail. This hearing officer can only conclude that the District does not have a methodology or curriculum it can offer for teaching a deaf kindergarten student to read and write English.

What the District apparently does have available are more simplified texts or materials for deaf children. Dr. Suppala objected to this as a way to teach deaf children because of the lack of equality with hearing children. T.R. Vol 4 at 550-551. Such texts and curriculum are readily available and have been for some time. It is important to note that the research shows that during all that time deaf children, using the traditional curriculum or methods of teaching

reading, upon reaching age 17-18, do not read beyond the third-fourth grade level. Whether this equates with a proven methodology for teaching a deaf child to read is questionable.

The District argues that it is not required to use glossing with L because this is an experimental methodology which is not proven. The Assistant Superintendent of ASDB was of the opinion that Dr. Supalla was researching in the classroom. This conclusion was reached by the Assistant Superintendent without any evidentiary basis whatsoever. Further, she was aware that Dr. Supalla had numerous publications on glossing.

Further, they say, there is no evidence that it proved successful with L. They cite, in support of this, that L met zero of the four goals on her IEP from Clerc and that this information was presented at the IEP meetings and no one, neither the parents nor Dr. Blackburn nor Dr. Supalla questioned or disputed it.

There is very little published research on the efficacy of using glossed text to teach deaf children to read. Dr. Supalla mentioned that he had written some publications and that one of his students had written a research paper on the comparative complexity of glossed text over grades K-3. Glossed books and the Resource guide are also being published. Overall there is no large body of research that statistically shows that gloss works. On the other hand, Laurent Clerc Charter School, whose charter was designed around using gloss to teach deaf children to read, was in operation for six years. There was no evidence that it was not successful. Further, the University of Arizona includes a training session for its prospective teachers of the deaf in the use of gloss for teaching deaf children to read. Colleen Cuberley, who has been assigned as L's teacher of the deaf, testified that she had training in using gloss while she was a student teacher, and found it interesting.



This hearing officer found little or nothing in the research or publications to support gloss as a methodology that works. In contrast, there seemed to be an abundance of research which found that the traditional means or method for teaching deaf children to read was ineffective, guaranteeing that a deaf child would stagnate in her reading level at grades three to four.

Other cases which have assessed whether one methodology or the other is more effective or designed to provide the disabled child with FAPE have looked closely at the research available to ascertain whether there was statistical proof the methodology worked. This is particularly of concern where the methodology is new or contrary to accepted or traditional methods of providing special instruction to a disabled child.

This hearing officer does not have that luxury in this case. The choice is between a method or curriculum that has, over a number of years, been largely unsuccessful and a method or curriculum that is new and claims to be successful but has no large body of research to support that claim.

In the final analysis, this hearing officer must turn to an inquiry of what has proved effective and appropriate to meet the unique needs of L, this five year old deaf child who has been taught using the gloss methodology for a year. Has she received meaningful educational benefit and has she progressed during the year she has been taught using this methodology? A review of the progress notes on her IEP, the portfolio of her work and her report card from Clerc demonstrate that she has progressed. Dr. Blackburn testified in detail about her work and her notable progress.

The District has stressed in its post hearing brief and Colleen Cubberley testified that it was noted on the District's proposed IEP for L, that she had met 0 of the 4 goals contained in her IEP from Clerc. Further, they argue, neither Dr. Blackburn nor any of L's supporters at the IEP

meetings of the District disputed this conclusion. The point of this argument did not seem to be that she had not progressed using gloss and therefore the technique failed. Rather, it seemed to be that this demonstrated proof that the District's IEP for L was reasonably calculated to provide her educational benefit.

It is difficult for the hearing officer to accord any weight to this argument. Ms. Cubberley's testimony was presented in the context of determining what L's current grade level was. All present at the IEP meetings agreed that she was at the readiness/kindergarten level. The evidence presented did not indicate whether there was much or any dispute during the IEP meetings about how she had progressed on her IEP. During the hearing Dr. Blackburn talked at length about the extent to which L had made progress or mastered the objectives and benchmarks under each of the four goals.

In determining whether the gloss methodology or curriculum used with L during her year at Clerc provided her with FAPE and meaningful educational benefits and should be continued, in the end this hearing officer was left with considering the demonstration by L during the hearing, reading from a glossed story book. The transcript of the record does not do justice to the impact of the demonstration. It does not reflect that L was adept in book handling skills, holding it right side up and looking from front to back and the printed words from left to right. It does not reflect that she knew enough alphabetic skills that in looking for a word beginning with "s", she did not start at the first of the resource book (which contained English and Gloss translations listed alphabetically), but began thumbing through the book from somewhere near the middle to look for the letter. All of the foregoing skills are those a child learns at the kindergarten level. It does not reflect that when it was pointed out that the word she was saying was incorrect, (can), she was able to analyze the word to the extent she saw it began with "s" and

use the resource book to find the correct word. (say). It does not so reflect because much of the demonstration was visual, as is L's primary language.

To this hearing officer, the demonstration showed that she knew the alphabetic principle, she had orthographic awareness and was beginning to recognize word sequence and sentence structure. Most important, she actually utilized the glossed text to help and guide her when she did not recognize a word.

The hearing officer finds that this methodology of glossing is crucial for Student L. It is the decision of this hearing officer that the District's proposed IEP for L, without the inclusion of glossing as a technique or methodology, constitutes a denial of FAPE. The District's failure to implement L's current September 5, 2001 IEP from Clerc, to the extent possible, resulted in a denial of L's right to receive a free appropriate public education.

It is noted by the hearing officer that during the course of the hearing and in Petitioner's post-hearing brief that Petitioner has requested direct instruction in American Sign Language for 40 minutes per day. This was not included as a request or issue in the initial complaint.

Inasmuch as the hearing officer believes that requiring the District to include glossing as a technique or methodology cannot be done without including some instruction in American Sign Language as an integral part of the methodology, the hearing officer will not consider this separately as a request.

## II. SPEECH LANGUAGE THERAPY

Speech language therapy was provided to L in the Clerc IEP as a related service. L was evaluated in August 2000 for speech language services while at CHIC and it was found she was entitled to speech language therapy as a related service. She received it at CHIC and when she enrolled at Clerc, based on her IEP from CHIC, it was continued. In the IEP's proposed by the

District, speech language therapy was not mentioned as a related service. Exhibits C, D. E. In Exhibit E.1., dated September 16, 2002, in a Written Notice document, it noted that the IEP team recommended speech/language testing, among other things and the parents had consented. At the time Petitioner filed the request for due process, the consent for evaluation was withdrawn.

The Speech Language pathologist, who attended all the IEP meetings for L at the District, testified during the hearing. She indicated that an evaluation of L would give her a lot of information about L's present level of performance, what she is able to do, what she is not able to do. It would help her in developing goals. T.R. Vol 1 at 215. She also indicated that she was told by the Arizona Department of Education that because speech language impairment can be a primary category of disability, as well as a related service, that a current evaluation was needed.

The law does not seem to require an evaluation for L at this point. She already has been evaluated for speech language services as of August 2000. Ariz. Admin. Code R7-2-401E(5)(f) requires an evaluation by a certified speech/language therapist for the initial evaluation of a child with the suspected disability of speech language impairment. This does not apply to L since her primary disability is hearing impairment and she has already been evaluated for speech language services. 20 U.S.C. §1414(a)(2) provides that a reevaluation may be conducted as conditions warrant, upon parental or teacher request, or every three years as necessary. The parents must give their consent. An evaluation is not required, despite the interpretation by ADE provided to L's teacher.

Here, however, the conditions may warrant it, given that L is transferring to a new school and her speech language teacher at the District has requested it and better than two years have

lapsed since her initial evaluation. Further, it appears that the parents had consented to the evaluation and simply withdrew it upon the filing of the request for due process.

There appears to be no dispute between the parties that speech language therapy is an important related service to provide to L as part of the District's IEP when developed.

The hearing officer therefore finds that the District shall continue to provide speech language therapy to L. It shall be included in the IEP which is developed for L. However, the parents shall give consent to a re-evaluation of L for speech language services which shall be completed as soon as practicable. Following completion of the testing, the parents and members of the IEP team shall convene to determine to what extent speech-language therapy may or shall continue to be included in the IEP.

### III. COMPENSATORY SERVICES

The hearing officer has found that the District's failure to incorporate provisions of L's IEP in the proposed IEP has resulted in a denial of FAPE. Given this finding, L is entitled to compensatory education, to include instruction using glossing and speech language therapy for the period of time since she was enrolled until the District began to implement the stay put order. It was unclear from the testimony as to whether L began on August 28 or August 30, 2002. It was also unclear as to when gloss instruction and speech language therapy was first provided to L. Ms. Cubberley testified it was either October 21<sup>st</sup> or October 22<sup>nd</sup>. The District shall provide additional hours of specialized instruction in both areas for the appropriate period of time as determined by the IEP team.

### ORDER

IT IS HEREBY ORDERED

1. The District's failure to implement L's current September 5, 2001 IEP resulted in a denial of the child's right to receive a free appropriate public education.

2. The District's proposed IEP of September 16, 2002 is not reasonably calculated to provide L with a free appropriate public education. The IEP shall be rewritten to include, but need not be limited to the following:

A. Placement in a full day kindergarten program;

B. Provision of a minimum of 40 weekly minutes of speech language therapy.

C. Specialized instruction in reading and writing print English using American Sign Language, glossing and graphemes. This specialized instruction shall be incorporated within the IEP as deemed appropriate by the IEP team, to include reference within the goals and objectives as well as within the Program Description of Special Education Services to be provided.

D. A trained ASL/gloss specialist to implement this specialized instruction.

3. L is awarded compensatory education in the form of additional hours of specialized instruction by a trained ASL/gloss specialist and additional hours of speech language therapy to be implemented as determined by the IEP team.

4. The IEP team shall convene within 10 school days to draft an appropriate IEP to include glossing and appropriately structured goals and objectives in accordance with this order.

5. The District shall provide teacher training and support to ensure that the specialized instruction in reading and writing English print using glossing is provided by a properly trained and qualified ASL/Gloss specialist.

6. The parents shall consent to a reevaluation of L by a speech language therapist.

7. The Petitioner is the prevailing party in this proceeding.

#### APPEAL PROCESS

The decision of the Hearing Officer may be appealed by filing an appeal with the Division of Special Education, Arizona Department of Education, which shall conduct an impartial review of the hearing.

A. Such an appeal shall be accepted only if it is initiated within 35 days after the decision of the Hearing Officer has been received by the parties. An extension of time for filing the appeal may be granted by the Division of Special Education for cause. Appeals must be forwarded to the Division of Special Education, Arizona Department of Education, 1535 W. Jefferson, Phoenix, Arizona 85007.

DATED this 18TH day of November, 2002

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Elizabeth B. Harmon  
Impartial Due Process Hearing Officer

Original mailed this 18<sup>th</sup>  
Day of November, 2002,  
By certified mail to:

Theresa Schambach, ADOE  
Dispute Resolution Coordinator  
1535 W. Jefferson  
Phoenix, AZ 85007

Copies mailed this 18<sup>th</sup> day of  
November, 2001, by Certified  
Mail to:

Jerri Katzerman  
Arizona Center for Disability Law  
3839 N. 3<sup>rd</sup> St., Suite 209  
Phoenix, AZ 85012

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